

§ 1965.211 Evaluation of the borrower's ability to prepay the loan.

The borrower's ability to prepay the loan will be evaluated in accordance with exhibit E of this subpart. If it is determined the borrower does not have the ability to finance the prepayment, the prepayment request will be denied. The borrower will be notified of the reasons for the decision and appeal rights will be given.

§ 1965.212 Appraisals.

To determine the appropriate incentives to offer a borrower, an appraisal must be completed. The purpose of the appraisal is to determine if the borrower's current equity in the project exceeds the initial investment. The project will be appraised as unsubsidized conventional multi-family housing. The effect on value of any hard and soft costs of conversion of the project from subsidized housing to unsubsidized conventional housing will be considered. Additionally, project reserve accounts and the present worth of any unexpired non-FmHA or its successor agency under Public Law 103-354 project based tenant subsidies will be valued as assets of the project for inclusion in the appraisal. FmHA or its successor agency under Public Law 103-354 Instruction 1922-B (available in any FmHA or its successor agency under Public Law 103-354 office) will be used for guidance in conducting multi-family housing appraisals. After receipt of the appraisal, the Servicing Official or other designated official will determine the amount of the equity loan, if any, the number of Rental Assistance (RA) units necessary, the amount of annual return on investment to be offered, and whether excess Section 8 rents may be released to the borrower, if applicable.

§ 1965.213 Offer of incentives to borrowers.

The Servicing Official must offer an incentive package to the borrower as an inducement to not prepay if the borrower's loan(s) is not subject to prohibitions on prepayment or the borrower has not previously accepted incentive offers on the project for which the associated restrictive-use period has not expired. If a prepayment incentive offer which includes any equity loan is

accepted, the equity loan may be processed and closed with the current borrower or any eligible transferee.

(a) *Availability of incentives.* Incentives may be offered only if the restrictive period has expired for any RRH project loan.

(b) *Available incentives.* One or more of the following incentives will be offered to the borrower. The amount of incentives will be determined in accordance with Exhibits D and E of this subpart (available in any Rural Development State or District Office).

(1) *Equity loans.* In RRH projects, a subsequent loan may be offered for equity for the difference between the current unpaid loan balance and a maximum of 90 percent of the project's value appraised as unsubsidized conventional housing. Equity loans may not be offered unless the servicing official determines that other incentives offered under this paragraph are not adequate to provide a fair return on the investment of the borrower, to prevent prepayment of the loan, or to prevent the displacement of project tenants.

(2) *Rental assistance.* Additional RA will be offered if needed by current tenants if found necessary by a market determination of need. The number of RA units offered will be based upon:

(i) The increase in rent overburden that will be experienced by tenants, in the project as a result of the incentives offered. The Multiple Housing Tenant File System (MTFS) will be reviewed to determine the number of tenants that will be rent overburdened by the increase in rents resulting from any subsequent loan made for equity. The number of RA units offered will be equal to the number of tenants experiencing rent overburden; and/or

(ii) A change in the market increasing the need for affordable housing. This criteria will usually be used when the project is experiencing substantial vacancies due to market factors. Generally, if the incentive offer contains a substantial equity loan, it would be unlikely that this provision would be consistent with the determination that the project is located in a strong unsubsidized market.

(iii) Reamortizing the existing debt under the provisions of § 1965.70 of subpart B of this part should be examined to determine if reamortization will lower existing debt service, thereby reducing tenant rent overburden and the need for additional RA.

(3) *Increase the maximum annual return on investment*—(i) *Borrower equity*. The borrower's equity in the project may be increased. The new equity is the difference between the value of the project appraised as unsubsidized conventional housing in conjunction with the incentive loan (if offered) and the unpaid balances of all loans against the project, including the incentive loan. If no new appraisal is made, equity will be determined by subtracting the outstanding balances of all loans against the project from the value shown in the most recent FmHA or its successor agency under Public Law 103-354 appraisal completed for the project prior to receipt of the prepayment request.

(ii) *Rate of return*. Borrowers not eligible to receive an equity loan but who are determined likely to prepay will be offered an incentive package which may include an increased rate of return. The rate to be offered will be the greater of the borrower's current rate established in the initial loan, or 2 percent above the 30-year Treasury Bond rate, rounded to the nearest $\frac{1}{4}$ percent. The appropriate Treasury Bond rate will be determined from newspapers or available financial publications and will be the rate published for the first day of the month following receipt of the complete prepayment request. The rate of return for borrowers receiving equity loans will remain at the rate currently established in the initial loan.

(iii) *Receipt of increased return*. Regardless of any increased return on investment agreed to as part of the incentive offer, the actual withdrawal of the return remains subject to conditions specified in paragraph XII B of exhibit B of subpart C of part 1930 of this chapter.

(4) *Excess section 8 rents*. For projects with project-based section 8 rents, the owner may be permitted to receive rents considered in excess of the amounts needed to meet annual project operating and maintenance, debt serv-

ice, and reserve expenses. In conjunction with the acceptance of excess section 8 rents as an incentive, the reserve account will be adjusted to reflect adequate funding for long-term repair, replacement and maintenance costs.

(5) *Conversion or modification of interest credit*. Convert full profit loans to limited profit Plan II loans or increase the interest subsidy for loans with section 8 assistance to make contract rents more financially feasible. The conversion would be accomplished by changing the designation of the project to Plan II.

(c) *Development of incentive package*—

(1) *Borrowers requesting immediate conversion from low and moderate-income use*. The required borrower information and criteria to be used in determining the incentives to offer, along with the steps to develop the incentive offer, are listed in exhibits D and E of this subpart.

(2) *Projects committed to low- and moderate-income use after prepayment by parties other than FmHA or its successor agency under Public Law 103-354*. In accordance with exhibits D and E of this subpart, incentives will be reduced in proportion to the length of time a project is committed to low- and moderate-income use after prepayment through requirements of parties other than FmHA or its successor agency under Public Law 103-354. The commitment for extended use may be voluntary or required by legal restrictions on use. The effect on the value of the project will be taken into consideration during the appraisal process.

(3) *Adjustment of project reserve accounts*. The reserve account must be maintained in conformance with the requirements of paragraph XIII B 2 c of exhibit B of subpart C of part 1930 of this chapter. At the time an incentive offer is developed, the maximum reserve amount should be adjusted to include the costs of any deferred maintenance items or expected long-term repair or replacement costs of the project.

(d) *Letter offering incentives to borrowers*. Within 20 days of the end of the tenant comment period, a letter will be sent to borrowers outlining the elements of the incentive offer developed

in accordance with this section and exhibits D and E of this subpart. The letter will include the following:

(1) A statement that the package is a one-time incentive being offered in return for the extension of the low and moderate income use of the housing. The letter will establish that, by accepting the incentives outlined in the letter, the borrower will be subject to a restrictive-use provision obligating the housing to low- and moderate-income use in the FmHA or its successor agency under Public Law 103-354 program for 20 years from the date the extended use agreement is executed, and prohibited from future incentive offers on the project so long as the restrictive-use provisions remain in effect.

(2) The amount of the equity loan being offered (if any). Any offer of an equity loan will include a statement that the borrower is subject to:

(i) A continued eligibility determination in accordance with subpart E of part 1944 of this chapter; and

(ii) Appropriation limitations. When an incentive offer that includes an equity loan is accepted by a borrower, funding the components of the offer is considered binding on FmHA or its successor agency under Public Law 103-354. If funds are not immediately available to fund an incentive loan, the amount of the offer will be included on a funding waiting list maintained by the National Office. Priority for funding is based on the date of receipt of the original complete prepayment request, as specified in §1965.205 of this subpart.

(3) The maximum amount of any increased return on investment offered.

(4) The number of RA units that will be provided to protect existing tenants from rent overburden due to other incentives that may increase rental rates in the project.

(5) Interest credit or additional interest credit if needed to protect existing tenants from rent overburden due to other incentives that may increase rental rates in the project.

(6) The offer of borrower receipt of excess project-based section 8 rents, if applicable.

(7) The offer must be accepted or rejected in writing within 30 days, or the prepayment request will be voided.

(8) Appropriation limitations may restrict available incentives each year. The actual receipt of the preceding incentives may not be forthcoming in the near future. However, the offer is binding on FmHA or its successor agency under Public Law 103-354. Acceptance of the incentive offer by the borrower will cause the request to be maintained on the waiting list for funding until obligated.

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§ 1965.214 Offering and processing of incentives.

(a) *Borrower does not respond to incentive offer.* If the borrower does not respond to the incentive offer within 30 calendar days of the date of the letter offering incentives, the State Office will advise the National Office by means of FmHA or its successor agency under Public Law 103-354 Guide Letter 1965-E-1 (available in any FmHA or its successor agency under Public Law 103-354 office) to remove the name from the waiting list. Tenants and any agencies notified in accordance with §1965.206 (b) of this subpart will be notified by the Servicing Office that the borrower has ceased to pursue the prepayment request and prepayment will not take place.

(b) *Borrower rejects the incentive offer.* If the borrower rejects the incentive offer within 30 calendar days, a determination of the continued need for the housing as subsidized housing will be made in accordance with §1965.215 (b) and exhibit E of this subpart. Tenants will be notified that the borrower has rejected the incentive offer and that a decision will be made by FmHA or its successor agency under Public Law 103-354 whether to accept the prepayment. The tenants will be informed of the factors used in making the decision.

(c) *Borrower indicates acceptance of the incentive package.* If the borrower indicates a willingness to accept an incentive package which includes an equity loan, a complete loan application in accordance with exhibit A-11 of subpart E of part 1944 of this chapter will be required. If an appraisal of the property has not been completed as required in §1965.212 of this subpart, one will be made at this time in accordance with